appears to be useful. However, the *SFNPRM* (at ¶¶46-47) proposes to classify services as either Track 1 or Track 2, prior to each new service tariff filing, under a "definitional" approach.

GTE is concerned that the classification process itself would complicate, rather than simplify, new service introductions, and would lead to unnecessary disputes as to whether the criteria for classification have been met. The proposals in the *SFNPRM* would also introduce uncertainty into the process, since the LEC would not know whether the service will be treated as Track 2 until after the vetting process is complete.[6] Many of the difficulties with the current process arise because the Commission has adopted a classification scheme (Part 69), which in turn has required a separate process (a Part 69 waiver) prior to tariff review. The Commission should not recreate this problem with Track 1 and Track 2 classification. Any classification process adopted must be clear and certain.

Any definitional approach to classifying Track 1 and Track 2 services would require the Commission to establish criteria for classification. Since this portion of the *Second Notice* deals with improvements to baseline regulation, new services should not be classified on the basis of the degree of competition. Customers in all markets should benefit from the introduction of new services

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[6] The *SFNPRM* proposes (at ¶48) that the LEC should file a petition asking the Common Carrier Bureau to classify the new service as Track 2. Such a petition has all the same disadvantages of inflexibility and delays inherent in the current waiver process.

without any unreasonable restrictions or undue delays that the current rules impose.[7]

The *Second Notice* also suggests (at ¶47) that Track 1 classification could be based on a finding that a service is "essential" to the LEC's competitors. Unless this criterion is well defined, competitors could claim that many LEC services were essential. Disputes over this point would delay, rather than speed, new service introduction. Further, the Commission should not, in general, embark on a process of compiling a list of essential elements. As noted *supra*, this will simply recreate the problems associated with the current Part 69 structure. Maintaining a list of prescribed services in an environment of rapidly changing technology and customer needs, and of rapidly developing competition, is simply a hopeless task. The Commission should mandate that a service be offered only if there is an overriding public policy reason to do so; certainly this determination should not be made as part of the tariff review process.

Similarly, the application of a "close substitute" standard would require market analysis, the details of which would be subject to controversy. The issue of substitution would more efficiently be handled in the context of the definition of relevant markets for streamlining.[8]

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[7] *See SFNPRM* at ¶44. Further, the *Second Notice* includes proposals for the selective streamlining of relevant access markets, based on competitive criteria. This is the appropriate part of the proposed framework for the use of competitive showings, not with regard to baseline regulation.

[8] Of the proposals for a "definitional" approach, the substitutability standard makes the most economic sense. However, GTE does not recommend that any "definitional" standard should be applied to new services on a

GTE suggests a simpler approach that would not require the Commission to classify each new service as it is filed. Any new service should be presumed to be a Track 2 service unless it has been found explicitly by the Commission, through a prior proceeding, to be Track 1.[9] In order to be considered Track 1, the Commission should have either: 1) required the service to be offered, as in the case of expanded interconnection;[10] or 2) adopted specific filing requirements for the service, as in the case of the initial video dialtone tariffs.[11]

GTE's approach would assure that the classification process itself would not introduce uncertainty into the evaluation of new services. In most cases, the LEC would know before the service is proposed whether it will be Track 1 or Track 2. It would eliminate the need to classify the service as part of the filing process, removing a time-consuming and contentious step. It would extend the

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case-by-case basis. Further, the APP concept proposed in the *SFNPRM* would capture some of the benefits of this approach without the complexity of a separate standard, since each APP could be presumed to be cross-elastic with the existing service on which it is based.

[9] Note that this is simply the obverse of the first option suggested in the *SFNPRM* (at ¶46), in which all new services would be presumed to be Track 1 unless the LEC demonstrated otherwise. GTE's proposal has the virtue that it eliminates the need for service-specific showings with each filing.

[10] In the context of USTA's 1993 access reform proposal, these would be considered "public policy" elements. *See USTA's Petition for Rulemaking*, Reform of the Interstate Access Charge Rules, RM-8356, filed September 17, 1993. ("*USTA's Petition*")

[11] *See SFNPRM* at ¶49. In either case, the requirement would have been adopted in an Order as a result of a Commission proceeding. GTE suggests that, for a service to be Track 1, the Commission should have made a specific finding to that effect in such an Order.

benefits of Track 2 treatment to as many new services as possible. At the same time, it would allow the Commission to extend Track 1 treatment to any service for which it finds a public policy concern that justifies the additional scrutiny.

GTE strongly disagrees, however, with the proposal in the *Second Notice* (at ¶38) to exclude video dialtone services from any consideration for baseline pricing flexibility thereby foreclosing any opportunity to treat video dialtone services as what they truly are – competitive delivery mechanisms.. This proposal ignores the fact that LEC video offerings most likely will meet each and every competitive test for streamlined regulation that the Commission is currently considering. While the Commission may have legitimate concerns that initial rates for video dialtone are not set at predatory levels, there is no reason to saddle video dialtone services with restrictive tariff filing requirements under a Track 1 scenario after a LEC's initial tariff filing becomes effective.

In order to achieve the Commission's goal of promoting the development of competition in local video markets and expanding the range of video programming options available to consumers, LECs must possess the ability to introduce new service options or modify existing service arrangements and price levels in order to compete with entrenched cable television providers. Indeed, at the very time the Commission is considering a plethora of new regulations in three separate rulemaking proceedings which could constrain the programming, operational, financial and pricing abilities of LECs, it is unilaterally considering relaxation of regulatory controls on the very entity that exerts total control over

existing video distribution markets – the monopoly cable providers.[12] Clearly, relaxing the existing pricing and service provisioning rules for incumbent cable operators while maintaining rigid tariff and pricing constraints on video dialtone providers will do nothing to promote competition in video distribution markets. Thus, the Commission can either move forward and encourage the development of video dialtone services by applying the same type pricing flexibility standards as it proposes for access services or it can smother it with overly complex and restrictive rules which will only guarantee the continuation of the existing cable television monopoly in LEC local serving areas. GTE urges the Commission to reduce the regulatory requirements for new video dialtone services in the same manner as other price cap services.

C. Shorter notice periods should be adopted for restructured rates.

GTE agrees with the tentative conclusion (at ¶50) that the cost support requirements for restructured services should remain essentially as they are today. The one significant change proposed in the *Second Notice* for restructured services is a reduction in the notice period. GTE agrees that a shorter notice period would be reasonable. The justification required for a restructured service consists of a relatively minimal showing that the proposed

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[12] *See Waiver of the Commission's Rules Regulating Rates for Cable Services*, as applied to cable systems operating in Dover Township, Ocean County, New Jersey, Order Requesting Comments, FCC 95-455, released November 6, 1995.

rates satisfy price cap constraints. It should be possible for the Commission staff to verify such showings in less than the current 45 day notice period.

The *SFNPRM* seeks comment (at ¶51) on whether one notice period (15 days) should be established for restructured filings that raise rates, and a shorter period (7 days) for proposals that reduce rates. GTE suggests that the proposed distinction will not generate enough benefit to justify administering it. GTE suggests that the Commission establish a uniform notice period of 14 days for all restructured services filings. This is the same notice required of within-band filings which require the same type of supporting data as restructured rates.

D. Local Exchange Carriers should be permitted to introduce Alternative Pricing Plans.

The *Second Notice* seeks comment (at ¶54) on whether to establish a new category of tariff filing for Alternative Pricing Plans ("APPs"), which would be subject to relaxed regulatory treatment. The *SFNPRM* (at ¶59) defines an APP as a service that permits a customer to "self-select" an optional discounted rate plan for a service that currently exists. APPs would be distinguished from new or restructured service filings.

GTE supports the Commission's proposal to accommodate optional discounted services by establishing separate tariff standards for APPs. The inability of LECs to offer discounted switched access services is one of the most serious shortcomings of the current access rules. As GTE has explained in its earlier price cap Comments, the best way to address this problem is to reform the Part 69 rules to eliminate the current prescribed rate structure. However, as

an immediate step which can be taken within the current structure, GTE believes that the APP proposal would provide significant public interest benefits, and should be adopted.

1. APPs would provide significant benefits.

By permitting APPs incorporating volume and term discounts, the Commission can improve the efficiency of access pricing and promote the development of new service options for customers. Service options incorporating volume discounts align rates more closely with costs, by bringing the incremental rate -- the discounted rate the customer faces at the margin -- closer to the incremental cost.[13] This sends better price signals to both the Interexchange Carrier ("IXC") and its end-user customer concerning how much switched access to buy, and how to compare switched access with other alternatives.

The *SFNPRM* recognizes (at ¶24) that switched access prices held above cost

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[13] Since telecommunications networks are characterized by economies of scale, a LEC's total cost will be greater than the revenue that would be produced if all of its services were priced at incremental cost. For this reason, LEC service prices must generally be set to include a contribution above incremental cost; the size of this markup should depend on the characteristics of demand for each service. If service prices were uniform, then customers would always face incremental prices well above incremental cost. Nonlinear prices, of which term and volume discounts are two examples, are devices that allow incremental prices to be brought down toward incremental cost, while still generating necessary contribution -- something which cannot be done with uniform prices alone.

> cause toll customers at the margin to consume other goods and services rather than to increase their use of interstate long distance services. Such prices also cause high-volume and even moderate-volume business customers to substitute dedicated facilities . . . even where the use of such facilities is not economically efficient . . .

APPs would also increase the range of service options available to customers. IXCs today compete with one another by offering volume and term packages of switched interexchange service to their end-user customers. However, their ability to do this is limited by the fact that no corresponding volume and term offerings are available for all rate elements applicable to switched access services. Accordingly, IXCs have structured their higher-volume switched offerings using special access direct connections.[14] If LECs are allowed to offer APPs, IXCs will have new opportunities to structure attractive offerings for their own customers using switched access. End-users would then have a wider range of service choices, and would be able to choose the service arrangement – using switched or special access – that best serves their needs.

GTE has recently filed a Petition for Waiver in order to offer a new switched access service called ZonePlus.[15] ZonePlus incorporates an innovative proposal for a volume discount which would apply to certain switched access

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[14] Interexchange discount packages structured around switched access include MCI's Friends and Family and most of AT&T's Pro-WATS offerings. Packages structured around special access include such services as AT&T's Megacom.

[15] *Petition for Waiver of the GTE Telephone Operating Companies*, filed Nov. 27, 1995 ("*ZonePlus Petition*").

rate elements.[16] These discounts would be provided to the access customer (usually the interexchange carrier), but would be based on the volume of traffic originating or terminating at a given end-user's location. This feature of ZonePlus is an example of the new customer options which could be made available by LECs under appropriate APP rules.[17]

Service options that include volume and term discounts are widely available in the telecommunications industry today for virtually every service *except* switched access. The lack of these discounts has repressed the demand for switched access and has artificially encouraged the use of special access alternatives. It has also discouraged the introduction of new services in the switched network infrastructure, since switched access cannot be priced to be attractive to larger volume users.[18] The most exciting new technology on the horizon promises to make high speed transmission, advanced intelligence and customer control available through switched networks. However, carriers will find it difficult to roll out such capabilities in their networks if the largest potential

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[16] Specifically, ZonePlus would provide discounts on the local switching, CCL, transport interconnection ("RIC"), and information surcharge elements. The discount would apply to all switched minutes to or from an end user location when those minutes exceed a threshold volume level.

[17] GTE has been severely restricted in offering innovations such as ZonePlus under the current rules because of the need to secure a waiver before offering the new service.

[18] These large business customers are the natural "early adopters" of new telecommunications services. They provide the demand for new services during the early stages of their adoption, and the revenue from these customers helps to fund the investment needed to make a new service widely available to all customers through the switched network.

customers for such capabilities find them unattractive because of artificial pricing constraints. Because any switched service arrangement must pay uniform, undiscounted access rates, large users have been encouraged instead to adopt new technology in the form of private networks.

Implementation of APPs will promote more efficient use of switched access networks by providing better price signals to customers choosing between switched and special access services. Maintaining a stable, or increasing, use of the switched access network, over time, will result in a larger, more stable demand base for price setting purposes, and thus could mitigate upward pressure on access prices. Moreover, APPs can provide customer price stability and encourage LEC network investment.

2. APPs should not be conditioned on a showing of competitive presence.

APPs would provide benefits in terms of efficiency and customer choice regardless of whether the access market is competitive. It is, therefore, imperative that LECs be able to introduce APPs under baseline regulation, without any test for the extent of competition in the market.[19]

Analogous changes in the regulation of AT&T, which allowed the introduction of services such as Reach-Out, Pro-WATS, Software Defined Network ("SDN") and Megacom, were all made before the Commission had even

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[19] For similar reasons, the Commission should not afford different treatment to APPs in different price cap baskets.

adopted price caps for AT&T, and certainly before the Commission had developed criteria for removing AT&T's services from price caps as they became competitive. The Notice that led to the approval of optional calling plans for AT&T explicitly assumed that AT&T retained market power for the services in question. In other words, these were changes to "baseline" regulation for AT&T.[20]

While APPs will benefit customers even in the absence of competition, it is also true that this price cap *Second Notice* is being undertaken against a background of generally developing access competition – just as the Commission's earlier decisions regarding AT&T were made in an environment of developing interexchange competition. As was true in the interexchange market, allowing the incumbent LECs to set more efficient prices under baseline regulation will help competition to develop in access markets on a sound economic basis, because it will send more reasonable price signals to prospective entrants.

3. APPs should be subject to simplified tariff review.

Because the continued availability of the existing service acts as a check on the LEC's pricing of APPs, these services should be subject to simplified tariff review. The *Second Notice* discusses two types of APPs.

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[20] Notice of Proposed Rulemaking, CC Docket No. 84-1235, 50 Fed. Reg. 1881, January 14, 1985 at ¶ 1.

The first type would be a promotional offering which the LEC would make available for a limited period. These services would be filed on 14 days' notice, without cost support, and could remain in effect up to 90 days.[21] GTE supports this proposal.

The second type would be a permanent offering. The *Second Notice* proposes (at ¶59) that temporary APPs could be converted to permanent ones by filing tariff revisions within the 90 day promotional period. While promotional APPs will be useful, GTE believes that, in the access market, most of the benefits will be realized from permanent APPs.[22] GTE proposes that a LEC should be able to file a permanent APP either by converting a promotional offering during the 90 day period, as the *SFNPRM* proposes, or by filing a permanent APP initially. The LEC should be able to simply file the tariff as a permanent offering, without the interim step of a promotional APP. In either case, the permanent APP filing should be subject to 21 days' notice.

Neither promotional nor permanent APP filings should require a waiver of the Part 69 rules.[23] As the *SFNPRM* notes (at ¶60), because the non-discounted offering would remain available, there would be "little likelihood of

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[21] *SFNPRM* at ¶59.

[22] Because access is a wholesale market with a few large customers, promotional offerings will have a limited role to play.

[23] If the Commission adopts an alternative to the waiver process, such as the Notice of Intent procedure GTE will propose *infra*, this alternative should not be required for APPs either, but should apply only to new services other than APPs.

harm to customers." The *SFNPRM* (at ¶55) also notes the Commission's previous finding that term discounts were "not controversial,"[24] but that small IXCs have raised concerns that volume discounts would "benefit primarily AT&T." As GTE's recent ZonePlus proposal makes clear, however, it is possible to design volume discounts which are neutral with respect to IXCs. Because the ZonePlus discount depends only on the end-user's volume, any IXC that serves that customer can obtain the same discount, regardless of the IXC's own size.[25]

The *Second Notice* suggests (at ¶59) that permanent APP filings should be made on 45 days' notice, and should comply with a new services test. The new services test currently applied to LEC access services is designed to ensure that prices are not too low, by applying a cost floor, and that prices are not too high, by examining overhead loadings. Since APPs will be based on existing services, GTE submits that the continued availability of the existing service will guard against prices that are too high. If the APP price is not attractive, customers will simply purchase the existing service. A simple cost floor test, based on direct cost, should suffice to protect against prices that are too low. As long as the APP rates cover their direct costs, the offering of APPs cannot deter entry by an efficient provider. An APP, therefore, cannot cause "competitive

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[24] *SFNPRM* at ¶55 and n.77.

[25] Every plan will have greater inherent benefits to some customers than others. With the increased number and variety of plans available, each customer should find APPs that could be of benefit.

harm" as defined in the *Second Notice* (at ¶28). GTE further submits that this "relaxed review" could reasonably be completed within a 21 day notice period.

The *Second Notice* summarizes the Commission's experience with APPs for AT&T's services, and reviews (at ¶56) its concerns regarding "headroom" created under price caps by these offerings. A permanent APP which meets the standard suggested *supra* will fully cover its direct cost, and would not create any shortfall to be made up by any other service. Moreover, because a promotional APP would be held out of price caps entirely, it could not affect caps for remaining services. A permanent APP should be held out of price caps for one year, and then rolled in based on actual demand, as other new services are today. This would eliminate the need to use demand forecasts, and obviate any of the concerns over errors in such forecasts raised in the *Second Notice.*

E. LECs should be allowed to respond to customers' needs through contract-based tariffs.

Individually negotiated contracts are important tools that are used routinely by most businesses to meet their customers' needs. GTE urges the Commission to permit LECs to employ customer-specific contracts, subject to appropriate safeguards, under baseline regulation.

1. LECs should be able to offer a contract-based tariff in response to a customer request.

The *Second Notice* proposes (at ¶48) to permit LECs to offer customer-specific contract-based tariffs for services subject to streamlined regulation. GTE supports this proposal, as discussed in greater detail *infra.* However, GTE

also believes that contract-based tariffs involving competitive procurements should be permitted for services under baseline regulation. GTE suggests that LEC contract-based tariffs should be permitted providing certain conditions are met: First, the customer must have issued a Request For Proposal ("RFP"); and, Second, at least one provider other than the LEC must have responded to the RFP.

While the services in question are still under baseline regulation, the LEC will not yet have demonstrated that competitive alternatives exist in the relevant access market. However, the fact that other carriers have responded to the RFP demonstrates that competitive alternatives are available to the particular customer that has issued the RFP, and for the specific package of services requested in the RFP.[26] The proposed contract should be filed as a tariff on 21 days' notice, with a showing that the proposed rates cover their direct costs. The services provided under contract should be excluded from price caps. The LEC would of course be required to provide comparable terms to any similarly situated customer in that market.

These contract-based tariffs would allow LECs to meet the needs of their customers for individually tailored packages of services. Unlike Individual Case Basis ("ICB") tariffs, these contracts could include services already generally

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[26] The Commission may wish to restrict the use of contracts for access services originating or terminating at an end user location to the large customer segment. GTE will discuss *infra* the use of customer characteristics to define a relevant market.

available under tariff. As GTE will explain *infra* in the context of streamlined regulation, the Commission has recognized that the customer-specific tailoring of services can provide benefits for customers. Further, contract-based pricing is needed to establish efficient entry signals and to prevent the rates in LECs' generally available tariffs from providing price umbrellas for entrants.

2. The Commission should not unreasonably restrict the use of individual case basis contracts.

A specific type of contract-based tariff is the ICB, which is used to provide services that are not otherwise generally available from the LEC. The *SFNPRM* proposes (at ¶65) to continue the current practice by further limiting the use of ICBs by requiring LECs to demonstrate that a proposed ICB is so unlike any existing service that the LEC would have no reasonable basis on which to develop generally available rates. The *SFNPRM* also proposes not allowing ICBs to be used for more than two customers, or longer than six months.

To encourage new service offerings, the current ICB practice must be revised. ICBs are a valid and useful tool for responding to specific customer requests in cases where the service does not justify a general offering. The Commission does not generally require carriers to offer new services, except in specific cases when there is a public policy reason for doing so. Instead, the Commission reviews proposals for services the carriers decide to offer. The Commission should not continue to sustain a mechanism which creates an obligation for the LEC to make a service generally available if it responds to a specific customer request. There is nothing inherent in offering a service to more

than two customers or for a period of more than six months which justifies requiring the filing of a generic rate for a service.

The effect of the proposal in the *Second Notice* would be to deter LECs from meeting legitimate customer needs, and to create a protected market segment for other carriers that are not burdened with the same requirement. Any mandate to provide a new LEC service should be based on a clear finding, in a rulemaking, that there is a public policy interest that justifies such a requirement; it should not be triggered by arbitrary guidelines for ICB tariffs.

Further, nothing in the Act would prohibit a LEC from offering service at an ICB rate. A customer-specific rate is not in itself unreasonably discriminatory, so long as any differences in rates are reasonable and the same ICB terms are available to any similarly situated customer. The same nondiscrimination requirements in the Act apply to nondominant common carriers, many of whom make extensive use of contracts today. The difference, under baseline regulation, is the need to control market power in markets where effective competition has not yet been demonstrated. This the Commission can accomplish, first, by requiring LECs to file the terms of each contract as a tariff, and, second, by requiring cost support for the proposed rates.

F. The Commission should eliminate the Part 69 waiver process for new services.

The *Second Notice* (at ¶¶66-74) proposes to eliminate the need for LECs to seek a waiver of Part 69 of the Commission's Rules in order to offer a new switched access service. GTE supports this objective and suggests a procedure

that is simpler, and more consistent with the provisions of the Act, than the one set forth in the *Second Notice.*

1. The need to seek waiver of the Commission's rules is a barrier to the introduction of new services.

As discussed *supra*, the Act establishes a presumption in favor of new services, and places the burden of proof on any party that seeks to show that the new service is not in the public interest. However, the current Part 69 rules reverse this presumption and require a LEC seeking to offer a new access service to file a petition either to waive or to change the rules.[27]

Under the current practice, a LEC proposing a new switched access service bears a heavy burden to demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[28] Not only does this place the burden of proof on the LEC, but it establishes a criterion – the need to demonstrate special circumstances – which is unrelated to the merits of the proposed service. Further, because there is no specific time within which the Commission must respond to a waiver petition, the process is necessarily slow and unreliable. Waivers are designed to deal with exceptions to a valid rule and should not be used to create or change policy.

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[27] As the *SFNPRM* (at ¶67) notes the rules have never required a waiver to introduce new special access elements. This approach has worked well, and no harm has resulted from the lack of a waiver process for special access.

[28] *SFNPRM* at ¶68 and n.109.

The effect of the current waiver process has been to turn the Act's presumption in favor of new services on its head.[29]

Further, as the *Second Notice* notes (at ¶69), new services may not fit readily into the current structure, and modification of the waiver process will not address this concern.[30] GTE agrees with the *Second Notice* (at ¶69) that "a comprehensive review of our Part 69 rules should appropriately be pursued in a separate proceeding." GTE urges the Commission to begin such a proceeding as soon as possible. In the meantime, however, interim relief of this inflexible and burdensome wavier process is imperative.

2. The Commission should adopt a simplified procedure which would replace the current waiver process.

The *SFNPRM* proposes (at ¶70) to modify Part 69 so that LECs would not be required to seek a waiver in order to introduce a new switched access rate element. Instead, the LEC would file a petition proposing to establish the new rate element or elements. Once the new service is approved for one LEC, other

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[29] GTE currently has pending before the Commission several Part 69 waiver petitions, one of which was filed in August 1993. *See, e.g., Petition for Waiver of the GTE Telephone Operating Companies to Offer Switched Access Discount Plan*, filed August 3, 1993. *See also, Petition for Waiver of the GTE Telephone Companies*, Expanded Interconnection with Local Telephone Company Facilities, Waiver of Threshold Requirement, filed January 6, 1995.

[30] The root of this problem may lie, not in the waiver process, but in the Part 69 rules. Without a rigid set of prescribed Part 69 elements, there would be no need to waive or change these rules in order to introduce a new service. Accordingly, GTE supports broader access charge reform.

LECs proposing similar services would only submit a certification and would be afforded expedited treatment.

This procedure offers a clear advantage over the current waiver process and clearly moves the Commission in the right direction. It would allow the Commission to establish criteria that are different from those pertaining to the waiver process and LECs would no longer have to demonstrate special circumstances to introduce a new service.[31] Further, the *SFNPRM* proposes (at ¶72) to require the petition to sufficiently describe the service to be offered and to propose alternative rate elements in more general terms than is currently required. However, the Commission's proposed process would require that the Bureau ultimately approve or specify the types of rate elements to be filed.

GTE agrees that an alternative to the waiver process is essential. New services should be allowed to proceed to the tariff review process as quickly as possible, with a minimum of delay and uncertainty. While the approach in the *Second Notice* is promising, it has two significant deficiencies, which could be addressed by adopting the modified proposal GTE suggests *infra*. First, the Commission's proposal would still place the burden on the LEC to show that the new service is in the public interest. This contrasts sharply with the presumption in favor of new services established in Section 7 of the Act. Second, the proposal does not establish a specific time frame within which a petition must be

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[31] In fact, the proposal to allow subsequent filings by other LECs on a more streamlined basis (*SFNPRM* at ¶71) relies on the assumption that the circumstances pertaining to the first LEC's petition were not unique.

acted upon. The lack of a time frame in the current process introduces not only delay, but considerable uncertainty, into the new service process and must not be carried over into any new process.

To correct these shortcomings, GTE proposes that a LEC would instead file a Notice of Intent to file which would describe the proposed service, rate structure and rate applications. The new service would be presumed to be in the public interest unless a contrary interim finding is made within a short specified time such as ten days. If the Commission does not act to the contrary, the LEC would be able to submit a tariff for the new service, subject to the appropriate notice interval.

This approach would shift the burden of the public interest showing to any party opposing the service, consistent with Section 7 of the Act. Parties could submit such a showing to the Commission during the notice period. If the Notice of Intent is opposed, the Commission, based on a determination that more information is required from the LEC, would advise the filing LEC and could extend the time to consider the matter. Within 30 days from the date of the original Notice of Intent filing, the Commission would determine whether the opposition to the service have successfully rebutted the presumption. If the Commission finds that the public interest presumption has been rebutted, the filing LEC could withdraw the proposal, revise the proposed service to address the Commission's concerns and resubmit the Notice of Intent or file a petition as

proposed in the *Second Notice*, with the burden of showing that the service is, in fact, in the public interest.[32]

The *Second Notice* also proposes (at ¶71) that, once a new service has been approved for one LEC, other LECs proposing similar services only need to submit a certification in order to receive expedited treatment. GTE agrees that a simplified and expedited procedure for subsequent carriers seeking to provide the same new service is appropriate. GTE suggests, however, that minor variations to a service also should be permitted under simplified and expedited procedures, as long as the difference is not so great as to raise new policy concerns. For example, another LEC may propose to establish the same basic rate element structure, but modify the manner in which the rate is applied. Any LEC would be able to file such a certification once another LEC has completed the Notice process outlined *supra*.

The *Second Notice* also proposes (at ¶73) that the determination of Track 1 or Track 2 status should be consolidated with the review of the petition considering the new service. GTE has suggested treatment for determining Tracks 1 and 2 services *supra* which, if adopted, would obviate the need to determine which track the service is on as part of the new service filing process. However, if the Commission decides to maintain the need to determine that the new service is a Track 2 service, GTE agrees that this determination should be

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[32] There should be a specific time period (say 45 days) within which the Commission should be required to act on any such petition.

made at the same time the Commission considers the petition, or the Notice of Intent suggested by GTE, on an expedited basis.

The *Second Notice* (at ¶70) also proposes that an APP which establishes a new rate elements for an existing service would need a public interest finding, just as is being proposed for new services. GTE believes that neither the waiver process, nor the Notice of Intent procedure suggested here, should apply to APPs. As explained *supra*, APPs will increase the range of service options available to customers. By definition, an APP is merely additional pricing options for a service that already exists.[33] The continued availability of the existing service acts as a check on the LEC's pricing of APPs so that prior review, as contemplated by the *Second Notice*, is unnecessary. LECs will want to introduce APPs that they believe customers will purchase. However, customers that determine that existing service arrangements will continue to meet their needs will retain the existing arrangement. Advance Commission approval is not necessary.

The process GTE proposes here would address the concern stated in the *Second Notice* that the Commission should "not retain any undue restrictions which might hinder LECs' ability to respond to the marketplace or to introduce new services."[34] It would provide the Commission, as an interim tool, with a procedure that would allow it to examine any new service filing, with input from

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[33] *See SFNPRM* at ¶59.

[34] *SFNPRM* at ¶69.

interested parties, to determine if the proposed service raises policy concerns which should be addressed in a rulemaking. Absent such concerns, new services should be allowed to proceed to the tariff review process as quickly as possible, with a minimum of delay and uncertainty. Finally, GTE's proposal would make the Commission's new service procedure consistent with the current provisions of the Act. In the longer term, after the Commission has adopted a comprehensive reform of Part 69, the current prescribed rate structure should no longer be in place and it would no longer be necessary for the Commission to have any "gating" mechanism such as the Notice process.

G. Lower Service Band Index limits should be eliminated.

GTE supports the Commission's proposal (at ¶75) to eliminate "the lower service band limits in the price cap plan." The Commission correctly concludes that the elimination of the lower service band limits "will result in more efficient pricing, enhance competition, and will not adversely affect ratepayers." The price cap plan clearly should not diminish the "substantial benefits that consumers would realize from lower prices."[35] Price reductions produce immediate, first-order benefits for access customers. As the *SFNPRM* notes (at ¶83), any factor that discourages a LEC from reducing prices may encourage inefficient entry and provide a pricing umbrella which would, in turn, discourage competitors from pricing at cost. In addition, if the Commission's goal is to

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[35] *SFNPRM* at ¶81.

encourage LECs to price closer to cost,[36] then it is necessary to remove any artificial barriers that prevent this from occurring.

GTE, perhaps more than any other price cap LEC, has reduced access rates under the price cap plan, including below-band filings for both switched and special access rates. While none of these filings has ultimately been rejected,[37] GTE has expended considerable time and effort in justifying below-band filings, and has had such reductions suspended for a period of time.[38] The lower banding constraints create a distinct disincentive for LECs to propose rate reductions.

The Commissions conclusion in the *First Report and Order* (at ¶11) that competition in the industry greatly reduces any risk of predatory pricing is accurate. The potential harm from rates that are too low is a second-order effect which could only affect consumers if the LEC were able to carry out a strategy of predation successfully. The chances for such a strategy to succeed in interstate access markets are slim, given the difficulty of recoupment, the rapid growth of entry in these markets, the existence of significant sunk investments in competitors' networks, and the LECs' inability to prevent reentry.

In any event, as the *SFNPRM* points out (at ¶83), price caps themselves discourage predation by further limiting the LECs' opportunity to recoup. In

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[36] *See SFNPRM* at ¶83.

[37] *See, e.g.*, GTE Telephone Operating Companies, 10 FCC Rcd 1573 (1994).

[38] *SFNPRM* at n.124.